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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY GARDNER,

Defendant and Appellant.

E070927

(Super.Ct.No. 16CR051883)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

**FACTUAL AND PROCEDURAL HISTORY**

**A. PROCEDURAL HISTORY**

On September 29, 2016, a felony complaint charged defendant and appellant Mark Anthony Gardner with unlawful driving or taking a vehicle under Vehicle Code section

10851, subdivision (a) (count 1). The complaint also alleged that defendant had suffered a prior conviction for vehicle theft under Penal Code section 665.5, and six prison priors under Penal Code section 667.5, subdivision (b).

On January 30, 2017, defendant pled no contest to count 1, unlawful driving or taking a vehicle, and admitted that he had suffered a prior conviction for vehicle theft. In exchange, the parties agreed that the prison priors would be dismissed. The parties also agreed to the following sentence: four years in county prison under Penal Code section 1170h, subdivision (5)(b), with two years suspended and placed on mandatory supervision for two years. On the same day, the trial court sentenced defendant according to the terms of the plea agreement. Thereafter, the trial court imposed a variety of fines and fees. The court also awarded defendant 129 actual days and 128 days of conduct credit for a total of 257 days.

On November 8, 2017, the probation department filed a petition to revoke mandatory supervision alleging that defendant violated the terms of his probation by being in possession of a stolen vehicle. On December 5, 2017, the trial court dismissed the petition at the People's request.

On June 6, 2018, the trial court revoked defendant's mandatory supervision and set a probation revocation hearing.

On July 6, 2018, at the probation revocation hearing, defendant admitted that he was in violation of mandatory supervision. The probation department calculated defendant's expected release date from custody as September 26, 2018, and the mandatory supervision expiration date of July 22, 2019. On the same date, defendant

filed a memorandum on “sentencing calculations.” Defendant asserted that he should be released from custody on July 7, 2018, and that mandatory supervision expired on May 2, 2019.

On the same day, the trial court sentenced defendant to county prison and reinstated mandatory supervision to expire on March 27, 2019. The court awarded defendant 340 actual days, 340 conduct credit days, and 301 mandatory supervision days, for a total of 981 days. The court also imposed a \$300 restitution fine it had originally stayed. (Pen. Code, § 1202.44.)

On July 19, 2018, defendant filed a timely notice of appeal based on the sentence or other matters that occurred after the plea, which do not affect its validity.

On September 7, 2018, the trial court corrected defendant’s credits to reflect 347 actual days, 346 conduct credit days, and 301 mandatory supervision days, for a total of 994 days.

## B. FACTUAL HISTORY

According to the felony complaint, defendant took a 2006 Toyota Tundra without the consent of the owner, with the intent to deprive the owner of title or possession of the vehicle.

## **DISCUSSION**

After defendant appealed, and upon his request, this court appointed counsel to represent him. On October 31, 2018, counsel filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and

requesting this court to undertake a review of the entire record. We offered defendant the opportunity to file a personal supplemental brief but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

### **DISPOSITION**

The judgment is affirmed.

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MILLER

J.

We concur:

McKINSTER

Acting P. J.

SLOUGH

J.